

(g)(1) Per gallon values for VOC and NO_x emissions reduction shall be calculated using the methodology specified in § 80.45 that is appropriate for the gasoline.

(2) Per-gallon values for toxic emissions performance reduction shall be established using:

(i) For gasoline subject to the simple model, the methodology under § 80.42 that is appropriate for the gasoline; and

(ii) For gasoline subject to the complex model, the methodology specified in § 80.45 that is appropriate for the gasoline.

(3) The total VOC, NO_x, and toxic emissions performance reduction values associated with a batch of gasoline (in percent reduction-gallons) is calculated by multiplying the per-gallon percent emissions performance reduction times the volume of the batch.

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§ 80.67 Compliance on average.

The requirements of this section apply to all reformulated gasoline and RBOB produced or imported for which compliance with one or more of the requirements of § 80.41 is determined on average ("averaged gasoline").

(a) *Compliance survey required in order to meet standards on average.* (1) Any refiner, importer, or oxygenate blender that complies with the compliance survey requirements of § 80.68 has the option of meeting the standards specified in § 80.41 for average compliance in addition to the option of meeting the standards specified in § 80.41 for per-gallon compliance; any refiner, importer, or oxygenate blender that does not comply with the survey requirements must meet the standards specified in § 80.41 for per-gallon compliance, and does not have the option of meeting standards on average.

(2)(i)(A) A refiner or importer that produces or imports reformulated gasoline that exceeds the average standards for oxygen or benzene (but not for other parameters that have average standards) may use such gasoline to offset reformulated gasoline which does not achieve such average standards, but only if the reformulated gasoline that does not achieve such average

standards is sold to ultimate consumers in the same covered area as was the reformulated gasoline which exceeds average standards; provided that

(B) Prior to the beginning of the averaging period when the averaging approach described in paragraph (a)(2)(i)(A) of this section is used, the refiner or importer obtains approval from EPA. In order to seek such approval, the refiner or importer shall submit a petition to EPA, such petition to include:

(1) The identification of the refiner and refinery, or importer, the covered area, and the averaging period; and

(2) A detailed description of the procedures the refiner or importer will use to ensure the gasoline is produced by the refiner or is imported by the importer and is used only in the covered area in question and is not used in any other covered area, and the record keeping, reporting, auditing, and other quality assurance measures that will be followed to establish the gasoline is used as intended; and

(C) The refiner or importer properly completes any requirements that are specified by EPA as conditions for approval of the petition.

(ii) Any refiner or importer that meets the requirements of paragraph (a)(2)(i) of this section will be deemed to have satisfied the compliance survey requirements of § 80.68 for the covered area in question.

(b) *Scope of averaging.* (1) Any refiner shall meet all applicable averaged standards separately for each of the refiner's refineries;

(2)(i) Any importer shall meet all applicable averaged standards on the basis of all averaged reformulated gasoline and RBOB imported by the importer; except that

(ii) Any importer to whom different standards apply for gasoline imported at different facilities by operation of § 80.41(i), shall meet the averaged standards separately for the averaged reformulated gasoline and RBOB imported into each group of facilities that is subject to the same standards; and

(3) Any oxygenate blender shall meet the averaged standard for oxygen separately for each of the oxygenate blender's oxygenate blending facilities, except that any oxygenate blender may

group the averaged reformulated gasoline produced at facilities at which gasoline is produced for use in a single covered area.

(c) *RVP and VOC emissions performance reduction compliance on average.* (1) The VOC-controlled reformulated gasoline and RBOB produced at any refinery or imported by any importer during the period January 1 through September 15 of each calendar year which is designated for average compliance for RVP or VOC emissions performance on average must meet the standards for RVP (in the case of a refinery or importer subject to the simple model standards) or the standards for VOC emissions performance reduction (in the case of a refinery or importer subject to the complex model standards) which are applicable to that refinery or importer as follows:

(i) Gasoline and RBOB designated for VOC Control Region 1 must meet the standards for that Region which are applicable to that refinery or importer; and

(ii) Gasoline and RBOB designated for VOC Control Region 2 must meet the standards for that Region which are applicable to that refinery or importer.

(2) In the case of a refinery or importer subject to the simple model standards, each gallon of reformulated gasoline and RBOB designated as being VOC-controlled may not exceed the maximum standards for RVP specified in § 80.41(b) which are applicable to that refiner or importer.

(3) In the case of a refinery or importer subject to the complex model standards, each gallon of reformulated gasoline designated as being VOC-controlled must equal or exceed the minimum standards for VOC emissions performance specified in § 80.41 which are applicable to that refinery or importer.

(d) *Toxics emissions reduction and benzene compliance on average.* (1) The averaging period for the requirements for benzene content and toxics emission performance is January 1 through December 31 of each year.

(2) The reformulated gasoline and RBOB produced at any refinery or imported by any importer during the toxics emissions performance and benzene averaging periods that is des-

ignated for average compliance for these parameters shall on average meet the standards specified for toxics emissions performance and benzene in § 80.41 which are applicable to that refinery or importer.

(3) Each gallon of reformulated gasoline may not exceed the maximum standard for benzene content specified in § 80.41 which is applicable to that refinery or importer.

(e) *NO_x compliance on average.* (1) The averaging period for NO_x emissions performance is January 1 through December 31 of each year.

(2) The requirements of this paragraph (e) apply separately to reformulated gasoline and RBOB in the following categories:

(i) All reformulated gasoline and RBOB that is designated as VOC-controlled; and

(ii) All reformulated gasoline and RBOB that is not designated as VOC-controlled.

(3) The reformulated gasoline and RBOB produced at any refinery or imported by any importer during the NO_x averaging period that is designated for average compliance for NO_x shall on average meet the standards for NO_x specified in § 80.41 that are applicable to that refinery or importer.

(4) Each gallon of reformulated gasoline must equal or exceed the minimum standards for NO_x emissions performance specified in § 80.41 which are applicable to that refinery or importer.

(f) *Oxygen compliance on average.* (1) The averaging period for the oxygen content requirements is January 1 through December 31 of each year.

(2) The requirements of this paragraph (f) apply separately to reformulated gasoline in the following categories:

(i) All reformulated gasoline;

(ii) All reformulated gasoline that is not designated as being OPRG; and

(iii) In the case of reformulated gasoline certified under the simple model, that which is designated as VOC-controlled.

(3) The reformulated gasoline produced at any refinery or imported by any importer during the oxygen averaging period that is designated for average compliance for oxygen shall on average meet the standards for oxygen

specified in §80.41 that is applicable to that refinery or importer.

(4) The reformulated gasoline that is produced at any oxygenate blending facility by blending RBOB with oxygenate that is designated for average compliance for oxygen shall on average meet the standards for oxygen specified in §80.41 that is applicable to that oxygenate blending facility.

(5) Each gallon of reformulated gasoline must meet the applicable minimum requirements, and in the case of simple model reformulated gasoline the minimum and maximum requirements, for oxygen content specified in §80.41.

(g) *Compliance calculation.* To determine compliance with the averaged standards in §80.41, any refiner for each of its refineries at which averaged reformulated gasoline or RBOB is produced, any oxygenate blender for each of its oxygenate blending facilities at which oxygen averaged reformulated gasoline is produced, and any importer that imports averaged reformulated gasoline or RBOB shall, for each averaging period and for each portion of gasoline for which standards must be separately achieved, and for each relevant standard, calculate:

(1)(i) The compliance total using the following formula:

$$\text{COMPLIANCE TOTAL} = \left(\sum_{i=1}^n V_i \right) \times \text{std}$$

where

V_i =the volume of gasoline batch i

std=the standard for the parameter being evaluated

n =the number of batches of gasoline produced or imported during the averaging period

and

(ii) The actual total using the following formula:

$$\text{ACTUAL TOTAL} = \sum_{i=1}^n (V_i \times \text{parm}_i)$$

where

V_i =the volume of gasoline batch i

parm_i =the parameter value of gasoline batch i

n =the number of batches of gasoline produced or imported during the averaging period

(2) For each standard, compare the actual total with the compliance total.

(3) For the VOC, NO_x , and toxics emissions performance and oxygen standards, the actual totals must be equal to or greater than the compliance totals to achieve compliance.

(4) For RVP and benzene standards, the actual total must be equal to or less than the compliance totals to achieve compliance.

(5) If the actual total for the oxygen standard is less than the compliance total, or if the actual total for the benzene standard is greater than the compliance total, credits for these parameters must be obtained from another refiner, importer or (in the case of oxygen) oxygenate blender in order to achieve compliance:

(i) The total number of oxygen credits required to achieve compliance is calculated by subtracting the actual total from the compliance total oxygen; and

(ii) The total number of benzene credits required to achieve compliance is calculated by subtracting the compliance total from the actual total benzene.

(6) If the actual total for the oxygen standard is greater than the compliance total, or if the actual total for the benzene standard is less than the compliance totals, credits for these parameters are generated:

(i) The total number of oxygen credits which may be traded to another refinery, importer, or oxygenate blender is calculated by subtracting the compliance total from the actual total for oxygen; and

(ii) The total number of benzene credits which may be traded to another refinery or importer is calculated by subtracting the actual total from the compliance total for benzene.

(h) *Credit transfers.* (1) Compliance with the averaged standards specified in §80.41 for oxygen and benzene (but for no other standards or requirements) may be achieved through the transfer of oxygen and benzene credits provided that:

(i) The credits were generated in the same averaging period as they are used;

(ii) The credit transfer takes place no later than fifteen working days following the end of the averaging period in which the reformulated gasoline credits were generated;

(iii) The credits are properly created;

(iv) The credits are transferred directly from the refiner, importer, or oxygenate blender that creates the credits to the refiner, importer, or oxygenate blender that uses the credits to achieve compliance;

(v) Oxygen credits are generated, transferred, and used:

(A) In the case of gasoline subject to the simple model standards, only in the following categories:

- (1) VOC-controlled, non-OPRG;
- (2) Non-VOC-controlled, non-OPRG;
- (3) Non-VOC-controlled, OPRG; and
- (4) VOC-controlled, OPRG; and

(B) In the case of gasoline subject to the complex model standards, only in the following categories:

- (1) OPRG; and
- (2) Non-OPRG;

(vi) Oxygen credits generated from gasoline subject to the complex model standards are not used to achieve compliance for gasoline subject to the simple model standards;

(vii) Oxygen credits are not used to achieve compliance with the minimum oxygen content standards in § 80.41; and

(viii) Benzene credits are not used to achieve compliance with the maximum benzene content standards in § 80.41.

(2) No party may transfer any credits to the extent such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits.

(3) In the case of credits that were improperly created, the following provisions apply:

(i) Improperly created credits may not be used to achieve compliance, regardless of a credit transferee's good faith belief that it was receiving valid credits;

(ii) No refiner, importer, or oxygenate blender may create, report, or

transfer improperly created credits; and

(iii) Where any credit transferor has in its balance at the conclusion of any averaging period both credits which were properly created and credits which were improperly created, the properly created credits will be applied first to any credit transfers before the transferor may apply any credits to achieve its own compliance.

(i) *Average compliance for reformulated gasoline produced or imported before January 1, 1995.* In the case of any reformulated gasoline that is intended to be used beginning January 1, 1995, but that is produced or imported prior to that date:

(1) Any refiner or importer may meet standards specified in § 80.41 for average compliance for such gasoline, provided the refiner or importer has the option of meeting standards on average for 1995 under paragraph (a) of this section, and provided the refiner or importer elects to be subject to average standards under § 80.65(c)(3); and

(2) Any average compliance gasoline under paragraph (i)(1) of this section shall be combined with average compliance gasoline produced during 1995 for purposes of compliance calculations under paragraph (g) of this section.

§ 80.68 Compliance surveys.

(a) *Compliance survey option 1.* In order to satisfy the compliance survey requirements, any refiner, importer, or oxygenate blender shall properly conduct a program of compliance surveys in accordance with a survey program plan which has been approved by the Administrator of EPA in each covered area which is supplied with any gasoline for which compliance is achieved on average that is produced by that refiner or oxygenate blender or imported by that importer. Such approval shall be based upon the survey program plan meeting the following criteria:

(1) The survey program shall consist of at least four surveys which shall occur during the following time periods: one survey during the period January 1 through May 31; two surveys during the period June 1 through September 15; and one survey during the period September 16 through December 31.